

The Gazette of India

EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 189] NEW DELHI, MONDAY, JULY 20, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th July 1953

S.R.O. 1423.—Whereas the election of Shri Chavda Akbar Dalumiyan of Kanazara, Deesa Taluka, Banas Kantha District, as a member of the House of the People from the Banas Kantha constituency, of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gordhandas Girdharlal Mehta, C/o Socialist Party, Palanpur, Bombay State;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 68 OF 1952

Exh. No. 386

CORAM

Shri B. C. Vakil, B.A. (Hons.), LL.B.—*Chairman.*

Shri T. P. Ghogale, B.A. (Hons.), LL.B.,

Shri A. A. Adarkar, B.A., LL.B.—*Members of the Election Tribunal.*

In the matter of the Representation of the People Act, 1951.

AND

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

AND

In the matter of the Election Petition presented thereunder by Mehta Gordhandas Girdharlal, c/o Socialist Party, Palanpur—*Petitioner.*

Versus

Shri P. B. Patwari, 1 Chavda Akbar Dalumiyan, Kanazara, Deesa Taluka, Banas Kantha District.

Shri J. B. Mehta, 2. Modi Mayachand Khemchand, Station Road, Palanpur.

Shri P. B. Patwari. 3. Mehta Dahyalal Manilal, Amir Road, Palanpur—*Respondents.*

JUDGMENT

This petition arises out of the result of the election to the House of the People from the Banas Kantha Constituency. The petitioner as well as the

three respondents had filed nomination papers. Before the date of the scrutiny respondent No. 3 Dahyalal withdrew from his candidature. Respondent No. 1 was declared as the returned candidate. The petitioner filed this petition to get the election of respondent No. 1 Abkarbhai declared void and to get him declared duly elected or alternatively to get the election declared wholly void.

2. Respondents Nos. 1, 2 and 3 filed their written statement at Exs. 19, 20 and 21 respectively. Shri Patwari, the learned Advocate for respondents Nos. 1 and 3 urged that he had some preliminary contentions to urge which would affect the extent and scope of the hearing. It may be stated here that the petitioner who is a Barrister was in this petition on one occasion represented by a counsel, on some occasions by pleader Mr. Jhaveri and to a large extent he conducted the petition himself. After hearing the parties and pleaders, three preliminary issues were heard and decided at Ex. 31. The Tribunal determined what were proper and valid particulars of illegal or corrupt practices and directed the petitioner to give further and better particulars with regard to the return of election expenses of respondent No. 1, being false in material particulars. Parties were requested to suggest what issues would arise. The issues to be framed were discussed in open court and agreed issues were framed at Ex. 32. Issue No. 3 which on three different grounds attacked the competence of respondent No. 1 to be a qualified candidate was tried first as it went to the root of the petition. A recording evidence on that issue and hearing detailed arguments, the Tribunal by its order Ex. 63 dated 11th March 1953 did not accept the contentions of the petitioner and ordered that the petition should proceed on the remaining issues. Even after the agreed issues were framed at Ex. 32, there were applications by the parties to make alterations in the issues. After deciding the applications, the following issues as finally recast survived on which the parties went to trial:—

- (1) Is it proved that the return of election expenses of respondent No. 1 was false in material particulars?
- (4) Is it proved that Shri Dahyabhai Manilal Mehta, respondent No. 3 herein, is a person serving under the Government of the State of Bombay? If so, did respondent No. 1 obtain or procure or abet or attempt to procure the assistance of the said Dahyabhai for the furtherance of the prospects of his election as mentioned in para. 3 of Annexure E?
- (5) Is it proved that any corrupt practice or practices, approved particulars of which have been filed by the petitioner in conformity with Section 82(2) or 83(3) was or were committed by respondent No. 1 or his agent or by any other person with the connivance of respondent No. 1 or his agent?
- (6) What order?

The findings of the Tribunal are as under for the reasons detailed below:—

- (1) No.
- (4) No; does not arise.
- (5) No.
- (6) As stated below.

REASONS

3. The Tribunal would proceed to deal with issues Nos. 4 and 5 first as they more effectively affect the result of the election than issue No. 1 which the petitioner concedes would only determine whether respondent No. 1 has or has not incurred a disqualification. There is no dispute with regard to the following facts pertaining to Shri Dahyalal Manilal Mehta. Respondent No. 3 is the non-official honorary Secretary of the District Development Board, Banas Kantha appointed by Government and draws an honorarium of Rs. 150 per month as full time secretary to the Board from Government treasury under G.R. No. 2113, dated 3rd March 1950 of the Agriculture and Forest Department, Government of Bombay, Ex. 213. As directed by G. Rs. 216 and Ex. 218 he is with effect from 1st June 1950 allowed to draw travelling allowance for the tours undertaken by him and he is allowed mileage allowance for journey performed by road and daily allowance as for a journey on tour admissible to a Government servant of the first grade. The history leading to the formation of the District Development Board is this: For rural development, Government had by Government Resolution No. 911 dated 9th August 1946 constituted Rural Development Boards. In 1948, Government were of opinion that those Boards should be reconstituted and they should consist of persons who were mainly concerned with social and economic uplift of rural areas and those

whose advice and suggestions for the improvement or extension of those activities would be useful in carrying out the various development schemes which may be undertaken by Government. Government, therefore, by G.R. No. 2127 dated 4th March 1948 reorganised the Boards and associated co-operative banks, societies and non-official members to be appointed by Government with the board. The Collector was to be the ex-officio chairman. The vice-chairman and secretary of the Board was to be a non-official and the District Agricultural Officer was to be a joint secretary (Ex. 222). The District Rural Development Boards were again reorganised in 1949 by G.R. No. 4348 dated 22nd November 1949, Ex. 221. The functions of the Board were again defined. The Board was to act as at focus of all rural development activities in the District and had to formulate schemes for improvement of the rural areas and for increasing the production of agricultural commodities mainly of food crops, for submission to Government through appropriate channels. The Board had also to execute such schemes and administer such funds as may be made their responsibility. The Board had also to assist and advise the officer concerned in carrying out the scheme for rural development and for increasing food production. By G.R. No. 4457 dated 22nd December 1949, the District Rural Development Board, Banas Kantha, was reconstituted and Shri Dahyalal was M. Mehta of Palanpur was appointed one of the 16 non-official members. By Ex. 212 dated 3rd January 1950 Shri Dahyalal was informed that he was appointed the non-official secretary of the District Rural Development Board as per Government Resolution No. 4457 of the Agriculture and Forest Department dated 22nd December 1949. He was to get Honorarium with effect from the date of his appointment by a G.R. dated 3rd March 1950, Ex. 220. The District Rural Development Board, Banas Kantha, was later converted into District Development Board, Banas Kantha.

4. The petitioner Shri G. G. Mehta argued his case in person. In his main argument after referring to the documents pertaining to the Rural Development Board, Shri Mehta urged, relying on Shrimati Hansben Mehta's case (Election Petition No. 23 of 1952 published in Bombay Government Gazette Pt. I, p. 5094 of 4th October 1952), that all the three tests for determining whether a person occupies a position of profit, i.e. (1) appointment by Government, (2) payment of honorarium (3) and the giving of direction by Government and compelling implicit obedience, threat applied to Shri Dahyalal and that Shri Dahyalal was, therefore, a person holding an office of profit under the Government of the State of Bombay. According to the submission then made by Shri Mehta, there was no distinction between a person holding a position of profit under the Government of the State of Bombay and a person serving under the State of Bombay and both were identical terms. After Shri Patwari urged that the real test to decide whether a person serves under the State of Bombay whether the State exercised that control over him which would make him its servant, Shri Mehta urged in his reply that such control was exercised as the Board had to formulate schemes for the improvement of rural areas and to submit them to Government through the appropriate channels and the proceedings of the Board had also to be forwarded to Government through the Provincial Rural Board.

5. It was conceded by Shri Patwari, the learned Advocate for respondents Nos. 1 and 3, that Shri Dahyalal occupied a position of profit or an office of profit under the Government of the State of Bombay but he vehemently contended that holding an office of profit was not tantamount to being a servant under the State and that in order that a person may be said to be a person serving under Government of the State of Bombay, there must be a relationship of master and servant between the Government of the State of Bombay and that person. Shri Mehta did not dispute the proposition that there should be a relationship of master and servant between the State of Bombay and Shri Dahyalal before the latter could be said to be serving under the former. So far as the petitioner is concerned he has in his pleading read with the annexure treated a Government official and person serving under the State of Bombay as identical terms. The particulars with regard to Shri Dahyalal were given by the petitioner in annexure E. Shri Dahyalal is described in the heading as a Government servant. According to the petitioner, he is a government employee occupying as important salaried post as the secretary of the Rural Development Board. The Jabalpur Tribunal in Election Petition No. 3 of 1952, the judgment in which is reported at page 542 of the Gazette of India Extraordinary Part II section 3 dated 26th February 1953, was dealing with the question whether a sarpanch or a panch of the Nyaya Panchayat was a servant under the State. The Tribunal observed at page 553 as under:—

"Murarilal Sarpanch had worked for respondent No. 1, and Toomchand another Panch had worked as his polling agent. Assuming the

other panchas such as Hulla Prasad and Sardarsingh had also worked for the respondent No. 1, the matter will not be covered by Section 123(8) of the Representation of the Peoples Act, inasmuch as a Panch or Sarpanch is not in our opinion a person serving under the State. He can in no sense of the terms be taken to be a servant of the State. A Panch is either selected from amongst the members of Gram Panchayat or is nominated by the Government. His selection or nomination will not put him into the category of servants. Sub-clause (b) of the explanation added to 123(8) of the Act mentions a number of village officers that are included in the category of persons serving under the State, but in our opinion, a Panch who works as an honorary Judge or Magistrate cannot be included in that category. Relationship of a master and servant is not created by the nomination or election and appointment of a Panch."

The West Bengal Election Tribunal in the case reported at page 890 of the Government Gazette Extraordinary, 1953 (Election Petition No. 120 of 1952. Election Case No. 4), while dealing with the question whether the teacher of an aided school was a person serving under the State of West Bengal, observed at page 898 that such teachers could hardly be regarded as Government servants. It would be, therefore, necessary to decide whether there is any of master and servant between the Government of the State of Bombay and Shri Dahyalal.

6. In Halsbury's Laws of England, 2nd edition, volume 22, in paragraph 191, at page 112, it is stated that whether or not, in a given case, the relation of a master or servant exists is a question of fact; but in all cases the relation imports the existence of power in the employer not only to direct what work the servant is to do, but also the manner in which the work is to be done. It is further stated that a person may be the servant of another although a third party has the power of appointing or dismissing him or requiring his dismissal or has powers of directions and control in regard to his work or pays him his wages. In *Simmons V. Heath Laundry Company*, (1910), 1 K.B. 543, where the Court of Appeal was dealing with the question as to what a contract of service, was Buckley L. J. observed that a contract of service necessarily involved the existence of a servant. The observation of Rammell L. J. was quoted with approval that a servant is a person subject to the command of his master *as to the manner in which he shall do his work*. The observations of Fletcher Moulton L. J. appear at page 550 that the greater the amount of direct control exercised over the person rendering the services, by the person contracting for them, the stronger the grounds for holding it to be a contract of service. In *Goolbai Motabhai Shroff V. Pestonji Cowasji*, 37 Bom. L.R. 410, Wadia of the Bombay High Court had to decide whether a person made an accident in the course of employment as a servant and consequently His Lordship had to decide when a relationship of a master and servant arises. At the end of page 415 His Lordship observed as under:—

"A servant is a person who voluntarily agrees whether for wages or not, to subject himself at all times during the period of his service to the lawful orders and directions of another in respect of the work to be done by him. It is that other person who is entitled in law to give orders and to have them obeyed. The relationship, therefore, exists only between persons of whom the one has the control of the work done by the other, and it does not depend merely on the mode of payment for service, or on the time for which services are engaged, or the nature of those services or on the power of dismissal, though these are certainly matters which the Court may take into consideration in assessing the relationship. The test, therefore, is the right of control which a person has in the manner in which the other does the work."

The petitioner had nothing to say with regard to the principles stated in the above decision. What he did in his reply was to make an attempt to show that the Government of the State of Bombay had some control.

7. Apart from the documents on the record, the only oral evidence with regard to the manner in which Shri Dahyalal has to perform his duties is of Dahyalal Ex. 382. He states "There is no regulation regulating the hours of work or the place of work. This applies to the work in both the Boards. I have not to ask for leave from anyone for leaving the headquarters or for going out of the District. I am not entitled to Provident Fund or gratuity. The B.C.S.R. rules do not apply to me. I am not prevented from doing any business or from participating in any political or any other activity. I am also

working as an Insurance agent. My work in the Board is not subject to any Government control." These statements remain unrefuted.

8. In the light of the above principles the petitioner must show that Shri Dahyalal is under the control of the Government of the State of Bombay not as to what he should do but also as to the manner of doing it. Mere power of appointment or dismissal, the payment of honorarium from the Government treasury and general supervision or control would be of no avail in case the requisite control does not exist. The greater the scope for discretion the less likelihood that Shri Dahyalal is a servant of the State. It must be shown that Dahyalal has agreed to subject himself at all times to the orders and direction with regard to the nature and manner of the work. The only facts which the petitioner submitted in reply with regard to this were that the Board had to formulate the schemes for improvement of rural areas and submit to Government through the appropriate channels and the reports of the proceedings of the District Rural Development Board were to be forwarded to the Secretary of the Provincial Rural Development Board who would submit them to Government through the chairman of the said Board.

9. The Tribunal thinks that what is under examination is the position of the secretary of the Rural Development Board and that should not be confused with that of the Board itself. But even what is pointed out with regard to the Board is that the reports of its proceedings are to be submitted to the secretary of the Provincial Board. So even the District Board has no direct contact with the Government of the State and the proceedings have to go through the Provincial Board. There is nothing to show what happens after the Provincial Board forwards the proceedings to Government. The submission of schemes to Government would show that matters of broad outline and initiations of undertaking go to Government. But there is nothing to show that in the manner of carrying out of the schemes the Board works under the control of Government. Function (c) stated in para 6 of Ex. 221 would show that when a scheme has been approved and the scheme and funds are under the responsibility of the District Board, it is the Board that has to execute them. Thus not only Shri Dahyalal is not shown as subject to the control of the State with regard to the manner of his work but even the Board is not shown to be so subject. There appears to be a large discretion in the manner of framing schemes and executing them, which is inconsistent with the position of a servant. So far as Shri Dahyalal is concerned, he has denied that his work is controlled by the State of Bombay and has asserted that he is free from those rules and restrictions to which the Government servant is subject. He has stated that his activities are unrestricted.

10. The other facts and circumstances also are not in favour of Shri Dahyalal being a person working under the State of Bombay. The Government envisaged enlargement of the scope of rural development. It was also faced with the food situation. It wanted to associate persons mainly concerned with social and economic uplift, whose advice and suggestions would be useful. Along with District officers various non-officials were associated. The Board consisted of 10 officials and 16 non-officials. There was to be a non-official secretary and the District Agricultural officer was to work as *ex-officio* joint secretary. The position of the non-official secretary stands contrasted in juxtaposition with the official joint secretary. The Board thus possessed a majority of non-officials, with one non-official and one official secretary.

11. Ex. 217 showed that the Collector of Banas Kantha was the *ex-officio* Chairman. Shri M. W. Desai, the Collector of Banas Kantha, was twice examined during the hearing of the petition. He was examined at the final hearing on 10th April 1953. Here was the *ex-officio* Chairman from whom the petitioner could have taken out if the State of Bombay exercised control over Shri Dahyalal. Shri M. W. Desai struck to the Tribunal to be that type of a farnk, impartial and straightforward witness who would have stated what he knew. It is not shown that the Collector as *ex-officio* Chairman exercised any control, much less that sort of control which would make Dahyalal a servant. The petitioner has, therefore, failed to show that Shri Dahyalal is a person serving under the Government of the State of Bombay. The second part of issue No. 4, therefore, does not survive for consideration.

12. The Tribunal next turn to the consideration of issue No. 5. The original issue No. 5 referred to the corrupt practice specified in Section 123(8) of the Representation of the People Act, 1951 but the petitioner pointed out that particulars furnished by him in paragraphs 2, 6, 7 8, 12, 15 and 16 of annexure F were considered proper and he was allowed to lead evidence with regard to them. The issue was, therefore made more comprehensive to cover allegations of corrupt practice with regard to which particulars furnished by him were

considered to be proper. Turning to annexure F, paragraph 2 thereof refers to a pamphlet in Gujarati alleged to have been published and circulated by a Government servant Morarji A. Joshi against the socialist party. At the time of the arguments the petitioners conceded that the original pamphlet was not proved and he did not, therefore, press the contention in para. 2 of annexure F. The allegation in para. 8 of the annexure F relates to one Shri Rushiraj, who was alleged to be drawing salary or honorarium from the Government of Bombay in respect of his alleged assistance to Respondent No. 1 in addressing a meeting of villagers. Shri Mehta did not press his allegation contained in para. 8 also. We are therefore, left with the allegations contained in paragraphs 6, 7, 12, 15 and 16 of annexure F. Paragraphs 6, 7 and 15 contained allegations against Patel Kesrabhai Muljibhai, Patel Kachra Godad, Patel Meghraj and Patel Manji Godad. The allegation is that these were all headmen and Patels who were Government servants and they still carried out the election work for the Congress candidate and the allegation against Meghraj Patel and Manji Godad is that they also gave threats to induce the voters to vote for respondent No. 1. The allegation in paragraph 16 is against respondent No. 3 Shri Dahyalal Manilal Mehta. The allegation is that Shri Dahyalal as the editor of the Azad Bharat published a statement in the Azad Bharat dated 18th December 1951 at page 8 that the petitioner was an unworthy and disloyal son of India and thus attacked the personal character and conduct of the petitioner which prejudiced him in the prospects of the election. The Tribunal will now proceed to take the allegations in the above paragraphs one by one.

13. Taking first, the allegation against Patel Kesrabhai Muljibhai of Sangla, the allegation in paragraph 6 of annexure F is that at the village Bhutedi near Sangla at a meeting of the leading men of different villages of Palanpur taluka held on 28th November 1951 Patel Kesrabhai advocated that all Patels or village headmen should see that the voters in their villages voted for the Congress party only. Now, if we refer to the evidence in this connection, the evidence on behalf of the petitioner on this point consists of his own testimony Ex. 224 and that of Manubhai Fejalal Kothari Ex. 309. The petitioner also relies on the correspondence that he carried on with the Collector, Exs. 253, 254 and 256 and the statement of Shri M. U. Desai that he did make an inquiry against Kesrabhai. Turning to the evidence of the petitioner Ex. 224, he has stated in his examined-in-chief that he had gone to the village Bhutedi on 28th November 1951 and Shri Manubhai Kothari, the socialist party candidate for the Bombay Legislative Assembly, and Shri Bachubhai Modi of Bhutedi were also present. He proceeded to say that Kesrabhai Muljibhai, Police Patel of Sangla, addressed the meeting and exhorted the Police Patels of all the villages who had assembled to vote for the Congress at the election for the Assembly and the Parliament. The words which he had ascribed to Kesrabhai were "formerly we were all wedded to the Nawab of Palanpur and now we are wedded to the Congress and if the Congress is defeated, we shall be like widows so everybody must vote for the Congress". He stated in cross-examination that "whatever he remembered as to what Kesrabhai said at the meeting he had stated in examination-in-chief." There is thus a material difference with regard to what Kesrabhai is alleged to have done. According to the particulars in annexure F, the meeting was a meeting of the leading men of the villages and Kesrabhai exhorted the headmen of Police Patels assembled there that they should see that the people voted for the Congress. Kesrabhai was sought to be shown as a Police Patel who was canvassing the support of the Police Patels to make a propaganda for the Congress and not a person who was asking voters to vote for the Congress. According to the statement in paragraph 5 of Ex. 224, Kesrabhai only asked for votes from the Police Patels. The respondents contested the allegation that the Police Patels had assembled there and their case was that people had only collected at Bhutedi for mourning on the occasion of the death of the Police Patel of Bhutedi and only the relatives and persons connected with the deceased had gathered there. The petitioner could not say how many Police Patels were present at the meeting and could not name any Police Patel except Kesrabhai with regard to whom he had made the allegation. The words which were ascribed to Kesrabhai though material were not mentioned in the particulars. Even if these words are construed it only makes out a case for calling upon the people to vote for the Congress. Manubhai Kothari Ex. 309 surpasses the petitioner in his enthusiasm. After referring to the statement with regard to being wedded to the Nawab of Palanpur and subsequently to the Congress, Manubhai deposes that Kesrabhai specifically asked the people gathered to vote for Yusufbhai, a congress candidate for the Legislative Assembly and respondent No. 1 and said that if they lost, the audience would be reduced to the position of widows. This Manubhai Kothari is an avowed socialist worker. He is a defeated candidate for the Assembly seat. He is a member of the Amirgadh Co-operative Society, every member of which receives a remuneration of Rs. 60. The petitioner Shri G. G. Mehta is a member of the

society, and Mrs. Mehta, the wife of the petitioner, is the Secretary of the society. Shri Manubhai admits that he is comparatively on good relationship with Shri Mehta. It was neither stated in the particulars nor in the petitioner's evidence that Kesrabhai made a propaganda in connection with respondent No. 1 personally. Shri Manubhai's evidence with regard to certain cars having been used for Congress work is also not reliable. He professes to have made notes of the use of Sardar's car and his rival Yusufmaji's car but he did not bring the notes with him to the Court. The oral evidence is thus different from the case sought to be made out by the petitioner, in his particulars. The petitioner had mentioned at the opening that he would be examining one Bachubhai Modi. He had even mentioned in his deposition that he was present but he subsequently dropped him. Kesrabhai himself is examined at Ex. 375, on behalf of respondent No. 1. He admits having gone to Bhutedi on the occasion of mourning but denies to have delivered any speech there or exhorted the people to vote for the Congress. He denies the words ascribed to him. He states that he is still a Police Patel and Government have not taken any steps against him. Manji Godad was examined for the respondents at Ex. 379. He also deposed that Laxman Patel of Bhutedi was the father-in-law of his son and he had gone on the occasion of mourning to Bhutedi. He states that Kesrabhai Patel was present but he did not address the people collected there nor did he canvass for votes for the Congress. He denies that Kesrabhai uttered the words which were ascribed to him. It is true that the petitioner by Ex. 253 dated 11th December 1951 made a general complaint with regard to Government employees in Banaskantha District carrying on active propaganda in favour of Congress candidates. By his letter dated 11th February 1952, Ex. 256, the Collector of Banaskantha made inquiries with regard to the complaint against the village headmen and asked the petitioner to quote definite instances to enable him to take further action. Shri Mehta admitted at the time of the arguments that he did not give any information required by the Collector by Ex. 256. Though Shri M. U. Desai stated that an inquiry was made against Kesrabhai he also, stated that no action was taken against him (Kesrabhai). While Shri Manubhai admitted that the people had collected on the occasion of mourning the petitioner did not remember whether people had met in connection with some mourning. The petitioner did not remember whether he spoke with regard to farming and his experience with regard to it and definitely denied that Kesrabhai had observed that he had used manure adequately but the Kuri crop did not come out and sprout out properly and on being asked the reasons the petitioner had observed that it was to be grown just like ginger. Shri Manubhai Kothari admitted that Kesrabhai had stated about seeds not properly spouting. Looking to the allegation in the annexure, the evidence of the petitioner and his witness Manubhai and all facts, circumstances and evidence on the record, it is not possible to accept that Kesrabhai gave assistance for the furtherance of the prospects of the election of respondent No. 1. It is to be remembered that the charge of corrupt practice is in the nature of a quasi criminal charge and law requires that the allegations should be incorporated in a verified list accompanying the petition. This is meant to prevent the shifting of the ground at the time of the hearing and when, as here, there is a material variance between the statement in the annexure and the evidence and the petitioner's evidence is discrepant, the allegation of corrupt practice cannot be accepted. There is also no evidence that respondent No. 1 knew about the people gathering at Bhutedi and he either procured or abetted in procuring the assistance from Kesrabhai.

14. The allegations with regard to Kachra Godad, Police Patel of the village of Gadhi in para. 8 of annexure F is that he actively carried on election propaganda for the Congress party on 14th December 1951 in Vasani and Sandhi in the Gadhi talika is the company of Congress workers like Bechar Master, a Congress worker. The petitioner himself has no personal knowledge about it. He has examined Uttamlal Ambalal Shah, a socialist party worker during the election. Uttamlal deposed with regard to Kachra Godad, Police Patel of Gadhi that he also made election propaganda for the Congress and used to tell the people of Samli and Vasani that votes should be given to the Congress. According to him he was present when Kachra said this at Samli but not at Vasani and he inferred that he must have done the same thing at Vasani as he said that he came from Vasani. Kachra just told the people. He did not address a meeting. The witness only imagined what Kachra might have done at Vasani and it is only the alleged propaganda at Samli that is to be scrutinised. Now, the particulars in the annexure make no reference to any village by name Samli. The village at which Kachra is said to have carried on election propaganda is Samdhi. Even assuming that both refer to the same place, the witness has made himself unbelievable by depositing that there were daily meetings during the election days convened by the Congress party as well as socialist party when several persons addressed the meetings and he could say for each

of such meeting as to which speakers had addressed it and what important persons were present in it. His enthusiasm outruns his discretion when he goes to the length of deposing that he had seen the order of appointment of Kachra Godad. He volunteered to say that Kachra received pay from Government. He as a socialist worker had made notes and used to send to the party office. If Kachra Godad made a propaganda for the Congress party the witness is a socialist worker was bound to report to his party and his notes or reports would have been a more reliable pieces of evidence than the oral evidence of the witness. The Tribunal does not consider the evidence of Uttamlal reliable. Kachra Godad Ex. 376 has denied having carried on any propaganda for the Congress and denied having moved with Becharadas Nathalal to Samdhl or Vasani for Congress election propaganda. Becharadas Nathalal Ex. 378 is an avowed Congress worker. He states that he had gone to Vasani as well as Shamli with Chhotubhai Mehta. He denied that Kachra Godad even accompanied him or carried on any election propaganda in his presence or to his knowledge. It is not proved that Kachra Godad did any election propaganda for the Congress as alleged. It is not shown that Akbarbhai had any knowledge about Kachra doing any election work or had any hand in his doing the alleged propaganda. There is no case of a corrupt practice made out under Section 123(8) of the Representation of the People Act, 1951 on the ground of any assistance by Kachra Godad.

15. The particulars with regard to Meghraj Patel are contained in para. 12 of annexure F accompanying the petition. It is alleged that Meghraj Patel, Police Patel and village headman of Mehmadpur had on or about 19th December 1951 carried on active election work, making propaganda and canvassing support for Congress candidates in the company of Isu Khushal and Moti Mochi of Mehmadpur and Galba Nanji. He is alleged to have told the voters on or about 19th December 1951 that Shri Morarji was a Minister and if the voters did not vote for the Congress their controlled rations would be stopped and their ration cards would be withdrawn. It is also alleged that one day, previous to the election day on 2nd January 1952 Shri Meghraj Patel along with Moti Mochi, Isu Khushal, and Galba Nanji visited Thakarda Vas as well as Vaghri Vas and threatened the people that if they did not vote for the Congress, they would not get articles in their village, their food and water would be stopped and the special perquisite known as "Khali Paninu Anaj" would be stopped. The petitioner has sought to make out his case by the evidence of Nathalal Bhaichand Ex. 231 and Veersang Motiji (Ex. 238). Respondent No. 1 has examined Motiram Panachand (Moti Mochi) Ex. 377 and Patel Meghraj Sardar Ex. 381. No witness of the petitioner bears out what annexure F alleges, Meghraj Patel had uttered on or about 19th December 1951. Nathalal Bhaichand remains content with saying that Meghraj had collected men and taken them in a motor to Vadgam. Even in this he is not supported by Veersang Motiji. There is no case of assistance or threat made out on the occasion of Shri Morarji's visit. With regard to Meghraj Patel's alleged visit to Thakarda Vas, he had according to him own showing went there subsequently. He entered after they had left. Even he went to Vaghri Vas after they had left. He has no personal knowledge of what happened at both the places. His evidence is useless with regard to the alleged propaganda at Thakarda Vas and Vaghri Vas. He appears to be a socialist worker and admits that he distributed slips for that party. Veersang Motiji is a Koli who came as a witness at the instance of the socialist party. According to his evidence the active election work and election propaganda and canvassing dwindled down to this that Meghraj Patel accompanied by Isu Khushal and Moti Mochi collected 3 to 4 persons at the Thakarda Vas and three to four persons at the Vaghri Vas. At both the places the alleged threats are said to have been given by Meghraj Patel. Motiram Panachand (Moti Mochi) Ex. 377 was professedly doing Congress work with Usuf Khushal and it would be rather surprising that the workers themselves would say nothing and the Police Patel should give the threats. Motiram Ex. 377 has stated on oath that Meghraj Patel never joined him and Yusuf and he never worked for the Congress at Mehmadpur or at any other place. He has deposed that Veerasand Moti is a Koli serving with Kantilal of Vadgam who is a socialist worker. The petitioner had himself at the time of his opening mentioned Kantilal Valdia of Vadgam also as a witness with regard to allegations against Meghraj but he was subsequently dropped.

16. The custom of giving of Khala Pani is not made out. As a result of the above discussion, the Tribunal is of opinion that the petition has failed to make out the allegations with regard to the conduct of Meghraj Patel. It is not proved that he gave assistance or threats. No corrupt practice is shown to have been committed. It is not shown that Akbarbhai was aware of this or that he had any hand in the alleged propaganda, canvassing or giving of threats.

17. Paragraph 15 of annexure F refers to the alleged election propaganda by Manji Godad, Patel of Bhattanal threatening the voters that if they did not

vote for the Congress their hutments would be destroyed and the water from the village well would not be made available. This allegation is not made out by any evidence and it is not pressed at the hearing. Manji Godad was examined by the respondent No. 1 in connection with the Bhutedi incident at Ex. 379. Even then he was not cross-examined with regard to allegations in para. 15 of annexure F.

18. This disposes of the allegations against Police Patels and from the particulars in annexure F, the allegation of a corrupt practice mentioned in Section 123(5) alleged against Dahyalal remains to be examined. It is alleged that Shri Dahyalal Mehta falsely described the petitioner "Bharatno Bevafa Ane Kaput Santana" i.e. the betrayer and lowly son of India, in the issue of Azad Bharat dated 18th December 1951 and that this was an allegation against his personal character and conduct.

19. Reading page 8 of the issue of the Azad Bharat, it leaves no manner of doubt that the mother referred to is the Congress and not Bharat. What is meant to be said is that those persons like Shri Mehta who loose control over their speech and talk of digging the grave of their mother like the Congress are her disloyal and unworthy sons. The petitioner admitted the statement attributed to him in a qualified manner. He admitted having said "if the Congress adopts corrupt practice, it will be buried at least in Banaskantha." It is an admitted fact that the petitioner was once in the Congress fold and seceded from it along with the Socialist Party.

20. The law as stated at Nanak Chand page 335 is that the statement must be of fact and not one of opinion. Comment as to political conduct does not come within Section 123(5). In Jadunandan Mahtoon V. Mosahib, a North Gaya General Rural Constituency case, quoted at Nanak Chand page 343, the respondent called petitioner Swarhi, i.e. selfish, "Deshdrohi", i.e. traitor and enemy of the country but the statements referred to the petitioner's actions in a public capacity and were held not to amount to a corrupt practice. Even a statement describing a person as an agent of "king of gundas, badmashes and shaitans" was held not to be a statement of fact and publication of such a statement even if false was held not to prejudice the candidate's prospects of election.

21. In the case before us the statement about the grave of the Congress being dug is admitted in a qualified manner. The petitioner was once a Congress man. From the petitioner's speech in the capacity of a candidate, Shri Dahyalal expressed an opinion but did not make a factual statement that he was disloyal and unworthy son of the Congress. The statement cannot be said to be false to the knowledge of Shri Dahyalal or one which he did not believe to be true. It does not refer to the personal character or conduct of the petitioner. The petitioner himself realised the weakness of the position and did not seriously press the point. As a result of aforesaid discussion, issue No. 5 should be answered in the negative.

22. Now remains issue No. 1 which requires the petitioner to prove that the return of election expenses of respondent No. 1 is false in material particulars. Annexure C which accompanied the petition in this connection only stated that the return of Election Expenses of respondent No. 1 was false in material particulars and was invalid and of no effect in law. The Tribunal, however, by its order Ex. 31 had given an opportunity to the petitioner to supply further and better particulars. The petitioner filed list Ex. 34. The respondents had by Exs. 51, 52 and 49 filed objections and the Tribunal then passed the order below Ex. 34 determining what particulars were permissible in consonance with its order Ex. 31. Those particulars approved of by the Tribunal by Ex. 34 alone have to be considered for the purpose of this issue. The following is the substance of the Tribunal's order with regard to particulars:—

Contents of paras. 1, 2 and 3 are not valid particulars. Petitioner is allowed to show that irregularities in para. 4 in law result in the return being fraudulent. This is to be shown from the record as it stands. Particulars in paras. 5, 6 and 7 allowed. Particulars 8 and 9 allowed for the purpose of showing that the items are incorrect but not for the purpose of making out a corrupt practice.

The contentions in substance of the petitioner in these respects may be stated thus:—

The respondent did not file proper vouchers with his returns of expenses and did not give inspection in time. The form has not been properly filled.

Details of amounts are not given and only abstract totals mentioned. Vouchers have not all been properly signed or dated. Seven outsiders had come from outside the constituency on propaganda tour. Their expenses by rail have not been stated. The running expenses of cars used in connection with their visits have been shown but the purchase or use value is not shown. Rs. 1,500 more were spent in this connection. The return does not show the entire expenses incurred on motor cars. In case of some motor cars, running expenses of petrol and repairs were shown but the purchase or use value was not shown. An item of Rs. 4-2-0 incurred in getting the withdrawal of respondent No. 2 published was false. The return was false as the sum of Rs. 602-8-3 received by the sale of some materials was not mentioned as receipt in form No. 26. The details were not given. Items of Rs. 5175 and Rs. 240 paid to respondent No. 2 under Samitl's voucher No. 55 dated 13th February 1952 were false.

23. Shri P. B. Patwari, the learned Advocate for respondent No. 1 contended that before the return of election expenses can be held to be false, it must be shown that there are corrupt motive accompanying any irregularity, mistake, incorrect statement etc., that may be pointed out. He urged that there was no allegation of a corrupt motive nor did the petitioner urge in his arguments that the alleged omission, mistake, incorrect statement etc., were actuated by any corrupt motive of respondent No. 1. Various authorities were pointed out by Shri Patwari. In reply Shri Mehta urged that in certain circumstances corrupt motive could be inferred.

24. In Nanak Chand's Law of Election and Election Petitions at page 363 the meaning of "false" is discussed and it is stated that the word "false" indicates that the return should be proved to be deliberately incorrect, and Relying on Amritsar City Muhammadan Constituency, 1938, Sen & Podar Indian Election Cases, 34 and other cases, it is observed that in other words corrupt motive must be shown. It is stated that the motive may be to omit legitimate expenses from the return where a maximum scale has been fixed or the intention may be to conceal which goes to prove some corrupt practice. It is further stated on the same page that omission from the return of election expenses of admitted items of expenses on account of lack of knowledge or inadvertence but without corrupt motive does not render a return false, i.e. deliberately incorrect. Omission of full description of payees, omission due to misapprehension of legal position would not render an return false though it may be irregular. In Lyallpur and Jhang General Constituency's case reported at page 504 of Election Cases by Sen & Podar, it was held following previous cases that the word 'false' indicated that the return of election expenses must be proved to be deliberately incorrect, i.e., that a corrupt motive must be shown. The intention must be to conceal expenditure and other details which would go to prove the commission of some corrupt practice or practices. The same view was taken in Hissar's case commencing at page 367 of the same book. In the opinion of the Tribunal this is a correct and reasonable view. If it was otherwise, candidates would be thrown out even for small and inadvertent mistake or omission. The case of respondent No. 1 is that the return is not incorrect and that at any rate it is not deliberately incorrect and there is no corrupt motive.

25. Some of the allegations with regard to the alleged falsity have hardly any substance and can be easily disposed of. About the expenditure of Rs. 4-2-0 in connection the publication of the withdrawal of respondent No. 2 it is not urged that the expenses was not incurred but it is urged that it is illegal expenditure because there can be no legal withdrawal after the last day fixed for withdrawal and the expenses of publication would be illegal expense which cannot be operative in the sense that the ballot box of Shri Modi, respondent No. 2, would still be placed but the act declaring that he did not want to contest was not one which was prohibited by law. If respondent No. 1 wanted to say that votes must be cast in his favour as Shri Mody did not wish to contest, there was nothing wrong about it and it is to his advantage to do so. The petitioner showed us no authority that such an expense though incurred should not be shown in the return. Similarly, there is no substance with regard to the items of Rs. 5175 and Rs. 240 paid to Shri Mody. One car was taken for use from Shri Mody and Shri Mody was paid Rs. 240. It is not shown that this amount is false and that a larger amount was paid and smaller one is debited. With regard to the amount of Rs. 5175, Ex. 278 a receipt passed by Shri Mody, shows that he received the amount for Mehta Chunilal Nathubhai of Vav. Shri Dahyalal has deposed that one Jeep car of Chunilal Nathubhai of Vav was purchased through Shri Mody and the sale proceeds were paid through him.

26. An amount of Rs. 602-8-3 was received by the sale of articles like cycle, gramophones, patromax etc. They were deducted from an item of expense of

Rs. 1095-2-9 in the voucher Ex. 276 and only Rs. 492-10-6 were debited under voucher No. 1. The petitioner's contention is that the amount of sale proceeds i.e. Rs. 602-8-3, should have been received in the return and the whole item of expenses should have been debited. It is also alleged that the particulars of the items have not been given. In the opinion of the Tribunal it is only a method of accounting which may not be quite regular. The result remains the same whether Rs. 491-10-6 alone are debited or whether Rs. 602-8-3 are credited and Rs. 1,095-2-9 are debited. There is no possibility of the total being exceeded. There is no corrupt motive. The voucher is a certified copy and the crosses in Ex. 276 show that some portion is not copied by the copyist. Even if particulars were not given it is too small a matter to render the return false. There is no corrupt motive.

27 It is alleged that while the running expenses of petrol, repairs etc., are shown, the use value of the cars is not shown. It is urged that though a car may be given to the Prachar Samiti by the C.P.C.C. the use value should be shown along with running expenses. Nanak Chand at page 195 quotes 3 H.I.E.P. 64 for the observation that only the actual expenses should be shown. The expenses of petrol of borrowed cars were shown but not the price. It was held that only the amount expended should be mentioned. A similar contention was raised by the petitioner before the Bellary Tribunal in the Election Case No. 3 of 1952 reported at page 827 of the *Gazette of India Extraordinary*, Part II, Section 3, dated 20th March 1953. The Tribunal observed as under:—

"One contention put forward by Mr. Satyavanta Rao on behalf of the petition is that though the 1st respondent was not paying any hire or any driver's charges to the five vehicles admitted to have been used by him, he should include moneys in respect of driver's charges and a reasonable hire, in the return of election expenses. No authority has been placed before us which would show that in a case of this kind, not merely the petrol charges but even the charges for the drivers and some amount of reasonable hire should be provided for, even though the vehicles have not been hired to the candidate. Apart from it, we fail to see how the non-inclusion of such unpaid or notional expenses would render the return false in any particular. Unless it is proved that the candidate has incurred the expenditure and that he did not show it, it appears to us the return cannot be considered to be false. Even if for any reason it should be held that the probable driver's charges or hire should be included, unless a corrupt motive is shown it is difficult to consider that the return is false."

28. No corrupt motive is alleged or made out and this is not a case in which a candidate obtains a fleet of cars from friends so that the maximum expenses may not be ostensibly exceeded.

29. With regard to the manner of filling the return, Shri Patwari pointed out Exs. 109 and 110—Ex. 109 is a press note issued by the Election Commission of India expressing commission's views as to how the return of expenses should be filled. Views are expressed as to how the expenses amongst the candidates of a particular party are to be apportioned. In Ex. 110, circulated to all Collectors and Returning Officers, it is stated "where a party or other body has incurred expenditure for several candidates together, the party should apportion the expenditure in the proper proportion and give a voucher to each candidate accordingly and these should be attached. The vouchers of the expenditure incurred and paid for by the party itself should be retained in the party office and should be available for examination when called upon." Respondent No. 1 says he has followed this procedure. Apart from the legal effect of Exs. 109 and 110, they would at least show that the respondent No. 1 or his agent had no corrupt motive in conforming to the mode suggested in Exs. 109 and 110. There may be some small irregularity here or there but there is no corrupt motive and in the opinion of the Tribunal the return is not rendered false in material particular on account of the irregularities in form. The petitioner wanted the Tribunal to infer corrupt motive from the non-production of books of account and some irregularities alleged by him. The Tribunal is of opinion that it is not possible to draw any such inference. No such case is made in the pleading or particulars and the petitioner himself has not taken proper steps to get the accounts produced if he wanted them. Respondent No. 1 has not kept any books of account. He has practically not incurred any expense personally except some small amount for travelling. The books kept by the Samiti are not in his possession and power. No notice to give inspection is produced. No application was made to the Tribunal to get the books produced nor was a summons taken to C.P.C.C., to whom the accounts

are submitted by the Prachar Samiti. It is stated at Nanak Chand at page 363 relying on cases cited in footnote No. 3 "where regular books of account have not been kept, it does not necessarily follow that all the particulars entered in the return of election expenses must be false". Whether an inference of corrupt motive can be drawn is a matter dependent on the facts of each case and the Tribunal does not feel that any such inference can be drawn, even if it were possible to do so in the absence of an allegation in the pleading and particulars.

30. There are allegations and denials with regard to expenses having been incurred for the use of some cars, particulars about which are given in para. 8 of Ex. 34. It appears that allegations have been made on the basis of the return itself and in most of the cases the evidence led by the petitioner is not satisfactory but the Tribunal does not think it necessary to examine each case as there is no corrupt motive alleged or proved. The allegation of omission of the travelling expenses of about Rs. 1,500 of seven outsiders stands on the same footing. There is no valid allegation that as a matter of fact respondent No. 1 had exceeded the permissible maximum amount of expenses. In the absence of corrupt motive the allegation that the return of expenses is false in material particulars is bound to fail.

31. The result of findings on issues Nos. 1, 4 and 5 is that the petition fails and should be dismissed.

32. The only thing that remains is the question of costs. The actual hearing has proceeded for 9 days at Palampur and 22 days at Ahmedabad. Taking this as well as the other circumstances, in the case, the Tribunal is of opinion that the petitioner should pay Rs. 1,000 to respondents Nos. 1 and 3 (who are represented by Shri Patwari) as costs of and incidental to the petition and he should pay Rs. 100 to respondent No. 2 as costs of and incidental to the petition.

ORDER

The petition is dismissed. The Tribunal orders the petitioner to pay respondents Nos. 1 and 3 Rs. 1,000 (one thousand) only as costs of and incidental to this petition and to pay Rs. 100 to respondent No. 2 as costs of and incidental to this petition. The petitioner shall bear his own costs.

The 27th June, 1953

(Sd.) B. C. VAKIL.

(Sd.) T. P. GHOGALE

(Sd.) A. A. ADARKAR.

[No. 19/68/52-Elec.III/10879.]

By order,

P. R. KRISHNAMURTHY, Asstt. Secy.